

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **KATTEN MUCHIN ZAVIS ROSENMAN**
8 Steve Cochran, State Bar Number 105541
9 Stacey McKee Knight, State Bar Number 181027
10 2029 Century Park East, Suite 2600
11 Los Angeles, California 90067-3012
12 Tel.: (310) 788-4455, Fax: (310) 712-8455

13 **SANGER & SWYSEN**
14 Robert M. Sanger, State Bar Number 058214
15 233 East Carrillo Street, Suite C
16 Santa Barbara, CA 93101
17 Tel.: (805) 962-4887, Fax: (805) 963-7311

18 **OXMAN & JAROSCAK**
19 Brian Oxman, State Bar Number 072172
20 14126 East Rosecrans
21 Santa Fe Springs, CA 90670
22 Tel.: (562) 921-5058, Fax: (562) 921-2298

23 Attorneys for Defendant
24 **MICHAEL JOSEPH JACKSON**

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

27 **REDACTED VERSION**

28 THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

Case No. 1133603

NOTICE OF MOTION AND MOTION TO
SUPPRESS AND RETURN MATERIALS
SEIZED PURSUANT TO SEARCH
WARRANT NUMBER 5135 PURSUANT
TO PENAL CODE SECTION 1538.5 AND
NON-STATUTORY GROUNDS;
DECLARATIONS OF [REDACTED]
AND ROBERT M. SANGER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

~~UNOFFICIAL~~

Honorable Rodney S. Melville
Date: October 14, 2004
Time: 8:30 am
Dept: SM 8

MOTION TO SUPPRESS MATERIALS SEIZED PURSUANT TO SEARCH WARRANT NUMBER 5135
PURSUANT TO PENAL CODE SECTION 1538.5 AND NON-STATUTORY GROUNDS

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
4 AUCHINCLOSS:

5 Please take notice that Mr. Michael Jackson will hereby does, and will move on October 14th,
6 2004, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 8 of the above-
7 entitled court, to quash said warrant and to suppress all evidence seized and all observations of law
8 enforcement or their representatives or agents and all of the fruits thereof, to return the seized items,
9 and for such other relief as the Court may deem just and proper.

10 This motion is based on the grounds that: (1) that the search amounted to an overbroad,
11 general search, in violation of the Fourth Amendment to the United States Constitution, Article 1,
12 Section 13 of the California Constitution, and California Penal Code Sections 1525, 1529 and
13 1538.5; (2) the District Attorney invaded the defense camp in violation of Mr. Jackson's rights to
14 counsel, due process, a fair trial and right against self-incrimination guaranteed by the Fifth, Sixth
15 and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7, 15 and
16 16 of the California Constitution; (3) the property to be seized, listed in the search warrant, could
17 have been obtained by a subpoena that would have targeted the pertinent information and avoided
18 abuse of Mr. Jackson's rights under the Fourth Amendment to the United States Constitution; (4)
19 the prosecution should have obtained the materials sought by the search warrant through the pretrial
20 discovery process; (5) the seized items are protected by the attorney-client privilege.

21 ///

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23 ///

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25 ///

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27 ///

1 This motion is based on this Notice of Motion, the Memorandum of Points and Authorities and
2 declarations of Robert M. Sanger and [REDACTED] attached hereto, the Court's papers, records
3 and files in this case and such evidence and other matters as may be received by the Court at or after
4 the hearing scheduled on this motion.

5 Dated: September 29, 2004

6 Respectfully submitted,

7 COLLINS, MESEREAU, REDDOCK & YU
8 Thomas A. Mesereau, Jr.
Susan C. Yu

9 KATTEN MUCHIN ZAVIS ROSENMAN
10 Steve Cochran
Stacey McKee Knight

11 SANGER & SWYSEN
12 Robert M. Sanger

13 OXMAN & JAROSCAK
14 Brian Oxman

15 By: 

16 Robert M. Sanger
17 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE SEARCH WAS AN OVERBROAD, GENERAL SEARCH

A. Mr. Jackson Has A Reasonable Expectation of Privacy In The Office Of His Personal Assistant.

The Fourth Amendment protects people not places. (*Katz v. United States* (1967) 389 U.S. 347, 351.) [REDACTED] is the personal assistant for Michael Jackson and the executive administrator of MJJ Productions. She administers the business and personal affairs for Mr. Jackson out of the office at her residence. (Declaration of [REDACTED]) Mr. Jackson has a reasonable expectation of privacy with regard to materials in control of his personal assistant, particularly with regard to confidential legal documents.

B. The Seized Items Are Outside The Scope Of The Search Warrant.

The evidence must be suppressed because the execution of the search was overbroad and amounted to an impermissible general search. The framers of the constitution drafted the Fourth Amendment to prohibit "exploratory rummaging" in a person's belongings. (*Andresen v. Maryland*, 427 U.S. 463, 480, 49 L.Ed.2d 627, 96 S.Ct. 2737, 2748 (1976) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 29 L.Ed.2d 564, 91 S.Ct. 2022, 2038 (1971)); see, *Payton v. New York*, 445 U.S. 573, 584-85, 63 L.Ed.2d 639, 100 S.Ct. 1371, 1378-79 (1980); *U.S. v. Beaumont*, 972 F.2d 553, 560-561 (5th Cir. 1992).) The law emphatically prohibits government agents from using a warrant as a "key" to obtain entry and then to violate the terms of the warrant by engaging in a search or seizure beyond its scope. A "governmental official [may not] use a seemingly precise and legal warrant only as a ticket to get into a man's home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant." (*Stanley v. Georgia*, 394 U.S. 557, 572, 22 L.Ed.2d 542, 89 S.Ct. 1243, 1251-52 (1969) (Stewart, J., concurring).)

To the extent the officers here searched through and seized items beyond those described by the warrant, they conducted a warrantless search. A warrantless search is presumptively

1 unreasonable under the Fourth Amendment to the United States Constitution. (*Groh v. Ramirez*
2 (2004) 124 S.Ct. 1284, 1290.) The burden is on the prosecution to prove that probable cause
3 existed to seize the property in question.

4 Here, most of the items seized are beyond the scope of the search warrant. The warrant
5 authorized the seizure of [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 (Exhibit C.)

10 A review of the evidence reveals that most of the evidence seized does not meet this
11 description. The items seized are outside of the scope of [REDACTED]

12 [REDACTED] Items seized that are not covered by the language of the warrant include, but are not
13 limiting to, the following:

- 14 1. [REDACTED]
- 15 2. [REDACTED]
- 16 3. [REDACTED]
- 17 4. [REDACTED]
- 18 5. [REDACTED]
- 19 6. [REDACTED]
- 20 7. [REDACTED]
- 21 8. [REDACTED]
- 22 9. [REDACTED]
- 23 10. [REDACTED]
- 24 11. [REDACTED]
- 25 12. [REDACTED]
- 26 [REDACTED]
- 27 13. [REDACTED]

14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]
32. [REDACTED]
33. [REDACTED]
34. [REDACTED]
35. [REDACTED]
36. [REDACTED]

All evidence seized -- not only those items beyond the scope of the warrant -- should be suppressed because the officers executed the warrant in flagrant disregard for its limitations. (See *United States v. Rettig*, 589 F.2d 418, 423 (9th Cir. 1978); *United States v. Heldt*, 668 F.2d 1238, 1259 (D.C. Cir. 1981).) This remedy is required in an appropriate case where the

1 violations of the warrant's requirements are so extreme that the search essentially is transformed
2 into an impermissible general search. (*People v. Bradford* (1997) 15 Cal. 4th 1229, 1305-1306.)

3 II.

4 **THE SEARCH OF THE OFFICE OF MR. JACKSON'S PERSONAL ASSISTANT AND**
5 **THE SEIZURE OF ATTORNEY-CLIENT PRIVILEGED ITEMS CONSTITUTES**
6 **ANOTHER INVASION OF THE DEFENSE CAMP**

7 The search of the office of Mr. Jackson's personal assistant's office and the seizure of
8 many items that fall under the attorney-client privilege constitute outrageous government
9 conduct. It was known to the District Attorney and law enforcement that [REDACTED] is the
10 personal assistant to Michael Jackson and that she maintains Mr. Jackson's personal papers and
11 files. (Exhibit D.) Some of the items seized relate to Mr. Jackson's attorneys' representation of
12 him in this matter and other items seized relate to Mr. Jackson's attorneys' representation of him
13 in unrelated civil litigation.

14 The District Attorney has demonstrated a blatant disregard for Defendant's rights to
15 counsel, due process, a fair trial and right against self-incrimination. Law enforcement and the
16 District Attorney continue to attempt to use search warrants, after a case has been filed, and after
17 a client has retained counsel, despite being aware that they run the risk of invading the defense
18 camp. It is particularly peculiar that officers would seek a search warrant such as this, and that
19 the District Attorney would approve of such a warrant, having been put on notice that their prior
20 actions invaded the defense camp. This type of conduct causes a loss of confidence in the
21 defense function, not only for Mr. Jackson, but for all those merely accused but presumed
22 innocent of crimes.

23 Suppression and return of the items seized is proper irrespective of whether the seized
24 materials are privileged. The Supreme Court of California, in *Barber v. Municipal Court* (1979)
25 24 Cal. 3d 742, 756, stated:

26 Whether or not the prosecution has directly gained any confidential information
27 which may be subject to suppression, the prosecution has been aided by its agent's
conduct. Petitioners have been prejudiced in their ability to prepare their defense.

1 They no longer feel they can freely, candidly, and with complete confidence
2 discuss their case with their attorney.

3 When the District Attorney's office and the law enforcement officers began conducting
4 the search of Mr. Jackson's personal assistant's office, they blatantly disregarded the attorney-
5 client and work product privileges and, more critically, the right of a person to the absolute
6 confidentiality of the attorney-client relationship. Items were seized that were clearly identifiable
7 as being subject to the attorney-client privilege. These actions denied Mr. Jackson's fundamental
8 due process rights and impaired his right to the effective assistance of counsel under the Fifth and
9 Sixth Amendments to the United States Constitution.

10 III.

11 **AT THIS STAGE, MATERIALS IN CONTROL OF THE DEFENDANT SHOULD, AT**
12 **THE VERY LEAST, BE OBTAINED THROUGH THE USE OF A SUBPOENA**

13 If there are materials that need to be obtained from Mr. Jackson at this stage in the
14 proceedings, after Mr. Jackson has obtained counsel the District Attorney should, at the very
15 least, seek this information through the use of a subpoena, rather than a search warrant. A search
16 warrant does not afford Mr. Jackson the status of a litigant and does not afford him of his right to
17 counsel. A search warrant is an intrusive technique, used to identify crime.

18 The search warrant authorizes the seizure of documentation of Mr. Jackson's, and his
19 associates, whereabouts and activities during [REDACTED] There was no reason
20 for the prosecution to search the office of Mr. Jackson's personal assistant for these materials.

21 A subpoena, on the other hand, gives a party the opportunity to be heard by the court,
22 prior to the dissemination of materials. The use of a search warrant, once a person is represented
23 by counsel, deprives the person of the ability to properly litigate the issue before the Court. This
24 is particularly true where a trial date has been set and material from the defendant's private
25 offices is seized. If anything, a subpoena should have been used so that the request for
26 information could have been litigated.

1 IV.

2 **THE PROSECUTION SHOULD HAVE SOUGHT THESE MATERIALS THROUGH**
3 **PRETRIAL DISCOVERY**

4 The materials sought by the search warrant were located in the private offices of a
5 defendant who is represented by counsel. Neither a search warrant nor a subpoena are the
6 appropriate vehicle for obtaining the types of documents sought by the search warrant. The
7 District Attorney was obligated to seek these materials through California's reciprocal discovery
8 process.

9 The Due Process Clause to the United States Constitution requires that discovery must be
10 reciprocal. (*Wardius v. Oregon* (1973) 412 U.S. 470, 474.) If a defendant is not permitted to use
11 the court's subpoena power to obtain discovery from the prosecution, clearly the prosecution may
12 not use a subpoena, let alone a search warrant, to obtain discoverable materials.

13 V.

14 **THE SEIZED MATERIALS ARE PROTECTED BY THE ATTORNEY-CLIENT**
15 **PRIVILEGE**

16 The government seized items that were covered by the attorney-client privilege. These
17 items must be suppressed and returned to counsel for Mr. Jackson. Items seized that are subject
18 to the protection of the attorney-client privilege include, but are not limited to the following:

- 19 1. [REDACTED]
20 2. [REDACTED]
21 3. [REDACTED]
22 4. [REDACTED]
23 5. [REDACTED]
24 6. [REDACTED]
25 7. [REDACTED]
26 8. [REDACTED]
27 9. [REDACTED]

1 10. [REDACTED]

2 11. [REDACTED]

3 13. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 14. [REDACTED]

7 15. [REDACTED]

8 [REDACTED]

9 VI.

10 CONCLUSION

11 For the reasons stated above, Mr. Jackson requests that this Court quash search warrant
12 number 5135 and to suppress all evidence seized and all observations of law enforcement or their
13 representatives or agents and all of the fruits thereof, to return the seized items, and for such
14 other relief as the Court may deem just and proper.

15 Dated: September 29, 2004

16 COLLINS, MESEREAU, REDDOCK & YU
17 Thomas A. Mesereau, Jr.
Susan C. Yu

18 KATTEN MUCHIN ZAVIS ROSENMAN
19 Steve Cochran
Stacey McKee Knight

20 SANGER & SWYSEN
21 Robert M. Sanger

22 OXYMAN & JAROSCAK
23 Brian Oxman

24 By: 

25 Robert M. Sanger
26 Attorneys for Defendant
27 MICHAEL JOSEPH JACKSON
28

DECLARATION OF ROBERT M. SANGER

I, Robert Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.
2. I was advised that law enforcement conducted a search of Mr. Jackson's personal assistant's, [REDACTED], home office on September 15, 2004.
3. I have reviewed the search warrant, affidavit and inventory related to the search. A true and correct copy of the search warrant is attached as Exhibit C. A true and correct copy of the affidavit is attached as Exhibit D. A true and correct copy of the inventory is attached as Exhibit E.
4. I have not had an opportunity to conduct a full and complete review of the items seized from [REDACTED] office. On September 24, 2004, I viewed the seized materials at the Santa Barbara Sheriff's Office. I also conducted a brief review of the contents of the harddrives seized from [REDACTED] office.
5. Most of the items seized fall outside of the scope of the search warrant. These items include, but are not limited to the following:

- 1.
- 2.
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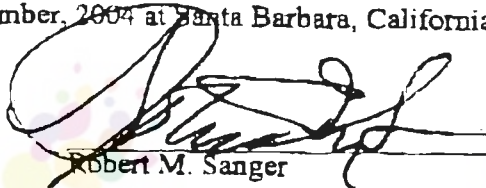
[REDACTED]

24. [REDACTED]
25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]
32. [REDACTED]
33. [REDACTED]
34. [REDACTED]
35. [REDACTED]
36. [REDACTED]

6. Many of the items seized are attorney-client privileged materials. These items include, but are not limited to:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 29th day of September, 2004 at Santa Barbara, California.


Robert M. Sanger

DECLARATION OF [REDACTED]

1. I am a resident of Los Angeles County. I submit this declaration as part of a motion to suppress and return items seized from my residence.

2. I am currently employed by Michael J. Jackson as his personal assistant. I am also the executive administrator for one of Mr. Jackson's entities, MJJ Productions. I have worked for Mr. Jackson and/or MJJ Productions for almost 14 years.

3. In December of 2000, the offices of MJJ Productions relocated to my home at [REDACTED]

[REDACTED] My detached garage is built out and houses office equipment and files.

4. I administer the business and personal affairs of Mr. Jackson out of the office space at my home. The office equipment was paid for and belongs to MJJ Productions. Except for some file drawers kept in my house for lack of space, everything related to my work for Mr. Jackson is maintained in the office area.

5. I often act as a liaison between my employer, Mr. Jackson, and his attorneys. I am a necessary participant in confidential communications between Mr. Jackson and his attorneys, including his counsel in the case of People v. Michael

Jackson. I receive written communications for the purpose of transmitting them to and from Mr. Jackson and counsel, and also maintain attorney-client materials for Mr. Jackson in confidential files.

6. My home and office area were searched by Santa Barbara County deputy sheriffs on September 15, 2004. Attached as Exhibit A is a copy of search warrant presented to me by deputies. Attached hereto as Exhibit B is a copy of the list of items taken by the deputies after the search.

7. I have not had an opportunity to review the materials that were seized from Mr. Jackson's office. However, I believe that there are a number of items, including [REDACTED]

The officers also perused through files and materials that they appeared to have read, but did not take with them, which contained [REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of September 2004 at Los Angeles, California.

[REDACTED]



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**[EXHIBIT A – SEARCH WARRANT NO. 5135
AND AFFIDAVIT – REDACTED]**



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**[EXHIBIT B – PROPERTY FORM RE: SEARCH
WARRANT NO. 5135 – REDACTED]**



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**[EXHIBIT C – SEARCH WARRANT NO. 5135
AND AFFIDAVIT – REDACTED]**



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**[EXHIBIT D – STATEMENT OF PROBABLE CAUSE
RE: SEARCH WARRANT NO. 5135 – REDACTED]**

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**[EXHIBIT E – PROPERTY FORM RE: SEARCH
WARRANT NO. 5135 – REDACTED]**



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PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On OCTOBER 1, 20 04, I served a copy of the attached NOTICE OF MOTION AND MOTION TO SUPPRESS AND RETURN MATERIALS SEIZED PURSUANT TO SEARCH WARRANT NUMBER 5135 PURSUANT TO PENAL CODE SECTION 1538.5 AND NON-STATUTORY GROUNDS; DECLARATIONS OF ****REDACTED**** AND ROBERT M. SANGER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF (ADDITIONAL REDACTION BY THE COURT) addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR.). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 1ST day of OCTOBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER